

SC NAACP v. Alexander,
D.S.C. Case No. 3:21-cv-03302-MGL-TJH-RMG

Exhibit 63

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP,

Plaintiffs,

vs. Civil Action No. 3:21-cv-03302-JMC-TJH-RMG

THOMAS C. ALEXANDER, et al.,
Defendants.

VIDEOTAPED WEB CONFERENCE

DEPOSITION OF: THOMAS BRUNELL, Ph.D.

DATE: Thursday, March 31, 2022

TIME: 11:06 a.m.

TIME ENDED: 4:58 p.m.

LOCATION: Richardson, Texas

REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

1 conducted?

2 A. No.

3 Q. I know you mentioned you haven't met
4 any of the named defendants, but have you been in
5 communication with any of them or any other state,
6 South Carolina elected officials?

7 A. No, I do not -- I don't think so,
8 certainly not that I remember.

9 Q. Is it your understanding in terms of
10 your role in this case, are you at all retained by
11 any of the named Senate defendants?

12 A. I'm not sure.

13 Q. Have you had any communications with
14 attorneys outside of those with Mr. Diamaduros and
15 Nexsen Pruet attorneys representing the House
16 defendants?

17 A. I don't think so. I think I've only
18 spoken with Nexsen Pruet people.

19 Q. Do you recall when you were retained
20 for this case?

21 A. Off the top of my head, no, but it was
22 probably -- it was -- I don't remember, but it was
23 a while ago, though.

24 Q. Do you recall when you were retained
25 what the subject matter of the case was?

1 A. Well, this was -- again, this was
2 before lit -- this was pre-litigation, so I was
3 hired to do racial bloc voting analysis as the
4 state prepared to redraw the maps.

5 Q. Would that be the summer or do you have
6 a general sense of when that would be, the
7 pre-litigation retention?

8 A. Let me look at my report. Is there a
9 date on my report? It doesn't appear that there
10 is.

11 What is it now? We're -- we're in
12 March of 2022. If I had to guess, I would say it
13 might be last summer. Late last summer maybe,
14 some -- somewhere around there, 2021. But I'm
15 just -- I'm just guessing.

16 Q. And I know you mentioned you were
17 retained to do racially polarized voting analyses;
18 is that correct?

19 A. Correct.

20 Q. Was there anything outside of -- was
21 there anything else in addition to that for the
22 scope of your retention?

23 A. Hum. I don't know if we ever discussed
24 me doing anything besides this. I don't recall. I
25 don't recall there being other -- other items.

1 Q. Was the retention agreement with the
2 law firm Nexsen Pruet?

3 A. I believe so, yes.

4 Q. Do you recall when you began conducting
5 your racially polarized voting analysis
6 pre-litigation?

7 A. I don't.

8 Q. Who were you first contacted by to work
9 on racially polarized voting analyses in South
10 Carolina?

11 A. I believe it was Andrew and another
12 lawyer whose name escapes me, but I think his first
13 name is Mark, but I don't remember his last name.

14 Q. And what were you asked to do or to
15 produce pre-litigation within that scope?

16 A. The report that you see. The report
17 that -- my first report.

18 Q. And so you would have conducted this
19 analysis regardless of the litigation; is -- was
20 that your understanding?

21 A. Yeah, I did it -- yes. It was
22 before -- before litigation started.

23 Q. In your expert report you indicate that
24 the rate in your compensation changed at some point
25 once the litigation started. Did the scope of your

1 retention change?

2 A. No, I don't -- I don't think so.

3 Q. Before the start of litigation, did you
4 present your findings to anyone?

5 A. Yes, I sent it to the lawyers.

6 Q. And how many hours of work did you
7 conduct before the start of litigation on this
8 report?

9 A. Probably 40 to 50 if I had to guess.

10 Q. Was the report completed or what -- I
11 guess when was the report completed in this case?

12 A. I don't recall. It wasn't -- it was --
13 it wasn't all that long ago. You know, so it
14 wasn't done -- it wasn't completed last summer, but
15 it was completed as we -- you know, as the -- as
16 the litigation got underway and -- and they needed
17 to -- to provide reports for discovery.

18 Q. What is your understanding of the
19 difference of what you were expected to produce pre
20 and post-litigation?

21 A. There's no difference.

22 Q. Do you recall when you were retained
23 officially for the start of litigation?

24 A. There was -- it's just one -- we only
25 had one agreement.

1 editing the report and things of that nature, but,
2 yeah, I don't recall specifically.

3 Q. How complete was your -- or did you
4 make all your findings pre-litigation for this
5 initial report?

6 A. I don't recall -- again, I don't
7 remember the timeline. So I think most --
8 certainly most of it was done at the time, but I
9 think there was some additional counties added
10 afterwards. After litigation started that might
11 have happened, but I don't recall specifically.

12 Q. And what were your initial findings
13 pre-litigation?

14 A. The same thing, that voting was
15 racially polarized.

16 Q. Based on just those two elections you
17 reviewed?

18 A. Yes.

19 Q. And for those 25 counties?

20 A. Like I just said, I don't know if it --
21 if that's how many counties it was before the
22 litigation or not.

23 Q. Would you have had time to look at
24 additional elections during the scope of your
25 retention in the case beyond the two?

1 know you answered part of this, but I just want to
2 make sure to give you another chance.

3 You know, would looking at three
4 election cycles provide more definitive conclusions
5 for assessing RPV than just looking at two?

6 A. I think since I'm a data person and I
7 believe in data analysis, I would say in general
8 more data are always better. We could go on
9 forever -- forever and ever. Like I said, I think
10 10,003 elections is better than 10,002, but that's
11 not the relevant question.

12 The question is, Did I feel comfortable
13 given what I knew about South Carolina's past --
14 recent past and given what I saw in the data to
15 stop where I stopped, and I think -- I thought it
16 was appropriate to stop there. The lawyers agreed
17 that any other -- any additional analyses would
18 be -- would be beating a dead horse.

19 Q. And just so we're on the same page,
20 when you say, "South Carolina's recent past," what
21 time line would that -- or what time frame would
22 that include?

23 A. I would say the '90s up until the
24 current time period.

25 Q. And I guess what about the -- the

1 previous election cycles raised that expectation
2 that you would find RPV here again?

3 A. Well, the -- it had been found in the
4 past, right. I found it in the last election
5 cycle. South Carolina has been drawing
6 majority-minority districts since the 1990s, and so
7 there would be -- you know, given that, you know,
8 tomorrow is going to look not that much different
9 from today, the expectation would be that racially
10 polarized voting is still there, that we should
11 check, and -- and I did check, and I found that it
12 is indeed still there.

13 Q. Do you know how many election cycles
14 were assessed to detect RPV in Gingles for
15 statewide elections?

16 A. Hum. I don't recall.

17 Q. I think I heard you before testify that
18 you -- or let me rephrase that.

19 How often in your RPV analysis that you
20 conducted do you look at two elections?

21 A. I don't -- I don't recall. I don't
22 remember the number of elections that I picked. In
23 some states it's more. In some states it's less.

24 Q. Do you know what factors would go into
25 choosing more elections in those other states?